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MAR 4 1965
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No. 955

In The Supreme Court of the United States

MARCH TERM 1965

HENRY J. LARKIN
d/b/a Larkin Company
Petitioner

vs

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of United States and Canada AFL-CIO, Local Union 53, New Bodford, Massachusetts. It's Business Agent, J. Henry Higgins of Wareham, Mass., and it's Vice President, Ralph H. Gable of Bourne, Massachusetts.

First Defendants

and

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of United States and Canada AFL-CIO, LOCAL 644, New Bedford, Massachusetts and it's Business Agent, Philip Jason.

Second Defendants

Defendant Appellees

Petition for A Writ of Certiorari to the
UNITED STATES COURT OF APPEALS
for the First Circuit

HENRY J. LARKIN,
Petitioner

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Petition for A Writ of Certiorari to the UNITED STATES COURT OF APPEALS for the First Circuit

HENRY J. LARKIN,
Petitioner

"Henry J. Larkin d/b/a Larkin Company, petitions for a Writ of Certiorari to review the final judgment of the Court of Appeals for the First Circuit entered in this case on December 9, 1964"

Opinion Below

The Court of Appeals opinion and judgment is s
forth in Appendix A and B.

Jurisdiction

The final judgment of the Court of Appeals was e
tered December 9, 1964 and the time for filing a petitio
for Certiorari in 90 days. Jurisdiction of this Court is i
voked under 28 U.S.C. 1254

QUESTIONS PRESENTED

Does the court have the right to:—

1. Dismiss this case that was properly brought wit
a Jury Trial Claim, and stated to afford the relief asked f
in the complaint, in the U. S. District Court as set forth
the Statute and within 6 years of the majority of the unfa
labor practices claimed by the plaintiff appellant, that wa
confirmed by The U. S. Court of Appeals.

STATUTE INVOLVED

Federal rules of civil procedure. (Rule 38 b)

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury serving upon the other parties a demand therefor in writing at any time after the commencement of the action not later than 10 days after the service of the last pleading directed to such issue. Such demand may be indorsed upon a pleading of the party.

Federal rules of civil procedure. (Rule 41 b)

(b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. In action tried by the court without a jury the court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits. As amended Dec. 27, 1946, eff. March 19, 1948.

7th amendment to the Constitution.

STATEMENT OF THE CASE

This is an appeal from the District Court judgment h
the plaintiff appellant wherein the court dismissed his ca
to recover against 2 Labor Unions for unfair labor practic
as set forth in the complaint, that was confirmed by the A
pelant Court.

There was no testimony or evidence taken by eith
court.

Reason For Granting The Writ

The plaintiff appellart submits that he is entitled to
trial by jury in a case that was property brought and stat
to afford relief under the act as set forth in the complaint

Conclusion

This petition for a writ of Certiorari should be grante

Respectfully submitted,

Henry J. Larkin

Petitioner

APPENDIX A
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 6394

HENRY J. LARKIN, d/b/a Larkin Co.

Plaintiff, Appellant

v.

United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of United States and Canada, AFL-CIO, Local 53, Etc., et al

Defendants, Appellees

Order of Court

November 16, 1964

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was submitted on briefs.

Upon consideration whereof,, it is now here ordered as follows: The appeal herein is dismissed for want of prosecution.

By the Court:

/s/ ROGER A. STINCHFIELD
Clerk

APPENDIX A

No. 6394.

HENRY J. LARKIN, d/b/a Larkin Co.,
PLAINTIFF, APPELANT,

v.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF UNITED STATES AND CANADA, AFL-CIO, LOCAL 53, ETC., ET AL.,
DEFENDANTS, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Before WOODBURY, *Chief Judge*, and HARTIGAN and ALDRICH, *Circuit Judges*.

HENRY J. LARKIN on brief pro se.
JOSEPH C. DUGGAN and LOUIS A. PERRIS, JR., on brief for appellees.

OPINION OF THE COURT

November 16, 1964.

PER CURIAM. This is an appeal to reverse a summary judgment of dismissal of a camplaint. It is apparent from an examination of the complaint, and of appellee's brief, that a number of questions are involved. The so-called brief filed by appellant reads in full as follows: "The plain-

tiff appellant submits that he is entitled (sic) to a trial by jury in a case that was property (sic) brought and stated to afford relief under the act as set forth in the complaint."

Our Rule 23(3) provides, **inter alia,** that an appellant's brief should contain a statement of the questions involved, a recitation of the facts, an argument, and a citation of authorities. It is also a well recognized principle of appellate procedure that points not argued are waived. **Brown v. Freedman,** 1 Cir., 1942, 125 F.2d 151. Appellant, although pro se until he retained counsel to argue his appeal, has been before this court on a number of occasions and must be charged with knowing the rules. If an appellant has not sufficient interest in his case to make an adequate presentation, or, though interested, can find nothing to say, he cannot expect the court to do his work for him.

Appellant having presented nothing, it is ordered that his appeal be dismissed for want of prosecution.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 6394

HENRY J. LARKIN, d/b/a Larkin Co.
Plaintiff, Appellant

v.

United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of United States and Canada, AFL-CIO, Local 53, Etc., et al

Defendants, Appellees

Before Woodbury, **Chief Judge,** and Aldrich, **Circuit Judge**

Order of Court

December 9, 1964

The Court's opinion dated November 16, 1964 is amended by inserting in the second paragraph, immediately following the citation to Brown v. Freedman, the following sentence,

> "Correspondingly, an appellant who, in effect, files no brief, is in default and may not argue orally."

Further, it is ordered that the petition for rehearing filed December 7, 1964, be, and the same hereby is, denied.

By the Court:

/s/ ROGER A. STINCHFIELD
Clerk